

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

RODNEY C. MOORE,

Plaintiff,

ORDER

v.

09-cv-023-slc

TIM ZIEGLER¹, JEREMY WRIGHT and
TOM SPEECH,

Defendants.

Plaintiff was granted leave to proceed in this action on March 9, 2009. On April 20, 2009, defendants answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a "Rebuttal to the Defendants," dkt. #38, in which he replies to factual statements made in the answer and argues that certain of defendants' affirmative defenses are not valid.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact are insufficient to make out a legal claim against the defendant. Although defendants have raised certain affirmative defenses in their answer, they have not filed a motion to dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendants' answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff from submitting a reply to an answer unless directed by the court. No such order has been entered in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Under Fed. R. Civ. P. 8(b)(6), the court assumes that the plaintiff

¹The caption has been updated to reflect the correct spelling of defendant Ziegler's name.

denies the answer. Therefore, although plaintiff is not permitted to respond to defendants' answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's reply to defendants' answer, dkt. #38, will be placed in the court's file but will not be considered.

Entered this 3rd day of May, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge